

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN ASSEMBLY AUGUST 7, 2006

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN ASSEMBLY JUNE 14, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MAY 3, 2006

AMENDED IN SENATE APRIL 24, 2006

SENATE BILL

No. 1550

Introduced by Senator Figueroa
(Principal coauthors: Senators Alquist and Scott)
(Principal coauthor: Assembly Member Jones)

February 23, 2006

An act to add Chapter 6 (commencing with Section 6500) to Division 3 of the Business and Professions Code, and to add Section 60.1 to, to amend, repeal, and add Article 4 (commencing with Section 2340) to Chapter 4 of Part 4 of Division 4 of, and to amend and repeal Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of, the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1550, as amended, Figueroa. Professional Fiduciaries Act.

Existing law requires all private professional conservators, private professional guardians, and private professional trustees to file a specified annual statement, under penalty of perjury, with the clerk of the court. Existing law prohibits a court from appointing a person as a conservator, guardian, or trustee, unless he or she is registered in the

Statewide Registry maintained by the Department of Justice and has filed the annual statement with the court.

This bill would enact the Professional Fiduciaries Act, which would create the ~~Board of~~ Professional Fiduciaries *Bureau* in the Department of Consumer Affairs and would require the ~~board~~ *bureau* to license and regulate professional fiduciaries, as specified. *The bill would also create the Professional Fiduciaries Advisory Committee with specified membership and duties.* On and after ~~January~~ July 1, 2008, the act would require a person acting or holding himself or herself out as a professional fiduciary to be licensed as a professional fiduciary, unless he or she is licensed as an attorney or ~~as a certified public accountant or is enrolled as an agent to practice before the Internal Revenue Service, as specified,~~ and would require a licensee to meet certain other requirements, including filing an application for licensure signed under penalty of perjury, *passing a licensing examination,* payment of licensing fees set by the ~~board~~ *bureau*, submission of fingerprints for a criminal background check, ~~filing a bond,~~ and annually filing a statement containing specified information under penalty of perjury. The act would provide for the deposit of licensing fees in the Professional ~~Fiduciaries~~ *Fiduciary* Fund, which the bill would create and which would be the successor fund to certain fees in the Statewide Registry. The ~~board~~ *bureau* would become inoperative on July 1, 2011, and be repealed on January 1, 2012, *and its responsibilities and jurisdiction would be transferred to the Professional Fiduciaries Advisory Committee.*

This bill would also ~~delete, on January~~ *make inoperative, as of July* 1, 2008, the provisions of the Probate Code that relate to the registration of private professional conservators and guardians.

This bill would only become operative if SB 1116, SB 1716, and AB 1363 are enacted and become effective on or before January 1, 2007.

Because this bill would require the filing of documents signed under penalty of perjury, it would expand the crime of perjury and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. This act, together with Senate Bill 1116, Senate*
2 *Bill 1716, and Assembly Bill 1363, shall be known and may be*
3 *cited as the Omnibus Conservatorship and Guardianship Reform*
4 *Act of 2006.*

5 ~~SECTION 1.~~

6 *SEC. 2.* The Legislature finds and declares all of the
7 following:

8 (a) California's population is growing at an increasing rate,
9 and the growth in the number of people 65 years of age or older
10 is surpassing that in other states. The number of California's
11 population 65 years of age or older will grow from 3.6 million
12 people in the year 2000, to 6.2 million people in the year 2020,
13 an increase of ~~171~~ 72 percent.

14 (b) As the population of California continues to grow and age,
15 an increasing number of people in the state are unable to provide
16 properly for their personal needs, manage their financial
17 resources, or resist fraud or undue influence as well as fiscal,
18 emotional, and physical harm. In addition, there is an increasing
19 use of trusts and durable powers of attorney by individuals
20 seeking to provide for potential incapacity. These vulnerable
21 members of society have an expectation that they and their
22 property will be protected by a fair system with high standards of
23 care.

24 (c) One result of these trends is the growing number of people
25 acting as *professional* conservators, guardians, trustees, attorneys
26 in fact, and estate administrators on behalf of other persons or
27 their estates. The persons acting in one or more of these
28 capacities are known *or are commonly referred to* as professional
29 fiduciaries.

30 (d) Professional fiduciaries are not adequately regulated at
31 present. This lack of regulation can result in the neglect or the
32 physical, emotional or financial abuse of the vulnerable clients
33 that professional fiduciaries are supposed to serve. Unless there
34 is a strengthened accountability, abuses of people who are unable

1 to take care of themselves or their property by professional
2 fiduciaries will increase.

3 (e) Creation of a program to license and regulate professional
4 fiduciaries is necessary to protect the public health, safety, and
5 welfare.

6 ~~SEC. 2.~~

7 *SEC. 3.* Chapter 6 (commencing with Section 6500) is added
8 to Division 3 of the Business and Professions Code, to read:

10 CHAPTER 6. PROFESSIONAL FIDUCIARIES

11
12 Article 1. General Provisions

13
14 6500. This chapter shall be known as the Professional
15 Fiduciaries Act.

16 6501. As used in this chapter, the following terms have the
17 following meanings:

18 (a) "Act" means this chapter.

19 ~~(b) "Board" means the Board of Professional Fiduciaries~~

20 (b) "*Bureau*" means the *Professional Fiduciaries Bureau*
21 within the Department of Consumer Affairs, established pursuant
22 to Section 6510.

23 (c) "Client" means an individual who is served by a
24 professional fiduciary.

25 (d) "Department" means the Department of Consumer Affairs.

26 (e) "Licensee" means a person who is licensed under this
27 chapter as a professional fiduciary.

28 (f) "Professional fiduciary" means a person who acts as a
29 conservator, guardian, trustee, personal representative, agent
30 under a durable power of attorney for health care, or agent under
31 a durable power of attorney for finances, conservator or
32 guardian for two or more persons at the same time who are not
33 related to the professional fiduciary or to each other by blood,
34 adoption, marriage, or registered domestic partnership.
35 "*Professional fiduciary*" also means a person who acts as a
36 trustee, agent under a durable power of attorney for health care,
37 or agent under a durable power of attorney for finances, for
38 more than three people or more than three families, or a
39 combination of people and families that totals more than three, at
40 the same time, who are not related to the professional fiduciary

1 *by blood, adoption, marriage, or registered domestic*
2 *partnership.* “Professional fiduciary” does not include any of the
3 following:

4 (1) A trust company, as defined in Section 83 of the Probate
5 Code.

6 (2) An FDIC-insured institution, or its holding companies,
7 subsidiaries, or affiliates. For the purposes of this paragraph,
8 “affiliate” means any entity that shares an ownership interest
9 with, or that is under the common control of, the FDIC-insured
10 institution.

11 (3) A person employed by an entity described in paragraph (1)
12 or (2) who is acting in the course and scope of that employment.

13 (4) Any public officer or public agency, including the public
14 guardian, public conservator, or other agency of the State of
15 California or of a county of California, when that public officer
16 or public agency is acting in the course and scope of official
17 duties, *or any regional center for persons with developmental*
18 *disabilities as defined in Section 4620 of the Welfare and*
19 *Institutions Code.*

20 (5) *Any person whose sole activity as a professional fiduciary*
21 *is as a broker-dealer, broker-dealer agent, investment adviser*
22 *representative registered and regulated under the Corporate*
23 *Securities Law of 1968 (Division 1 (commencing with section*
24 *25000) of Title 4 of the Corporations Code), the Investment*
25 *Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), or the Securities*
26 *Exchange Act of 1934 (15 U.S.C. 78a et seq.), or involves serving*
27 *as a trustee to a company regulated by the Securities and*
28 *Exchange Commission under the Investment Company Act of*
29 *1940 (15 U.S.C.80a-1 et seq.).*

30 (g) “Committee” means the Professional Fiduciaries Advisory
31 Committee, as established pursuant to Section 6511..

32 6502. (a) Every person who is required to register with the
33 Statewide Registry maintained by the Department of Justice
34 under Chapter 13 (commencing with Section 2850) of Part 4 of
35 Division 4 of the Probate Code prior to January 1, 2007, shall be
36 required to obtain a license as a professional fiduciary under this
37 chapter.

38 (b) Every person who is required to file information with the
39 clerk of the court under Article 4 (commencing with Section
40 2340) of Chapter 3 of Part 4 of Division 4 of the Probate Code

1 prior to January 1, 2007, shall be required to obtain a license as a
2 professional fiduciary under this chapter.

3
4 Article 2. Administration
5

6 ~~6510. (a) There is in the Department of Consumer Affairs a~~
7 ~~Board of Professional Fiduciaries, which consists of seven~~
8 ~~members, four of whom shall be public members and three of~~
9 ~~whom shall be licensees actively engaged as professional~~
10 ~~fiduciaries in this state. One of the public members shall be a~~
11 ~~member of a nonprofit organization advocating on behalf of the~~
12 ~~elderly, and one of the public members shall be a probate court~~
13 ~~investigator.~~

14 ~~(b) In addition to the seven member board, the~~
15 ~~Conservatorship Ombudsman, as provided in Section 9801 of the~~
16 ~~Welfare and Institutions Code, shall serve as an ex officio~~
17 ~~nonvoting member of the board.~~

18 ~~(c) This section shall become inoperative on July 1, 2011, and,~~
19 ~~as of January 1, 2012, is repealed, unless a later enacted statute,~~
20 ~~that becomes operative on or before January 1, 2011, deletes or~~
21 ~~extends the dates on which it becomes inoperative and is~~
22 ~~repealed. The repeal of this section renders the board subject to~~
23 ~~the review required by Division 1.2 (commencing with Section~~
24 ~~473).~~

25 ~~6511. (a) Members of the board shall be appointed for terms~~
26 ~~of four years, and shall hold office until the appointment of their~~
27 ~~successors or until one year has elapsed since the expiration of~~
28 ~~the term for which they were appointed, whichever first occurs.~~
29 ~~Vacancies shall be filled by the appointing power for the~~
30 ~~unexpired portion of the terms in which they occur. No person~~
31 ~~shall serve as a member of the board for more than two~~
32 ~~consecutive terms.~~

33 ~~(b) The Governor shall appoint the three licensee members.~~
34 ~~The board members appointed by the Governor shall be subject~~
35 ~~to approval by the Senate.~~

36 ~~(c) The Senate Committee on Rules and the Speaker of the~~
37 ~~Assembly shall each appoint two public members.~~

38 ~~(d) Members of the board may be removed from office by the~~
39 ~~appointing authority for neglect of any duty imposed by state~~

1 law, for incompetence, or for unprofessional or dishonorable
2 conduct.

3 ~~6512. Each member of the board shall receive a per diem and~~
4 ~~expenses as provided in Section 103.~~

5 ~~6513. The board shall appoint, prescribe the duties of, and fix~~
6 ~~the salary of, an executive officer. The board may also employ,~~

7 *6510. (a) There is within the jurisdiction of the department*
8 *the Professional Fiduciaries Bureau. The bureau is under the*
9 *supervision and control of the director. The duty of enforcing and*
10 *administering this chapter is vested in the chief of the bureau,*
11 *who is responsible to the director. Every power granted or duty*
12 *imposed upon the director under this chapter may be exercised*
13 *or performed in the name of the director by a deputy director or*
14 *by the chief, subject to conditions and limitations as the director*
15 *may prescribe.*

16 *(b) The Governor shall appoint, subject to confirmation by the*
17 *Senate, the chief of the bureau, at a salary to be fixed and*
18 *determined by the director with the approval of the Director of*
19 *Finance. The chief shall serve under the direction and*
20 *supervision of the director and at the pleasure of the Governor.*

21 *(c) This section shall become inoperative on July 1, 2011, and,*
22 *as of January 1, 2012, is repealed, unless a later enacted statute,*
23 *that becomes operative on or before January 1, 2011, deletes or*
24 *extends the dates on which it becomes inoperative and is*
25 *repealed. The repeal of this section renders the bureau subject to*
26 *the review required by Division 1.2 (commencing with Section*
27 *473).*

28 *Notwithstanding any other provision of law, upon the repeal of*
29 *this section, the responsibilities and jurisdiction of the bureau*
30 *shall be transferred to the Professional Fiduciaries Advisory*
31 *Committee, as provided by Section 6511.*

32 *6511. (a) There is within the bureau a Professional*
33 *Fiduciaries Advisory Committee. The committee shall consist of*
34 *seven members; three of whom shall be licensees actively*
35 *engaged as professional fiduciaries in this state, and four of*
36 *whom shall be public members. One of the public members shall*
37 *be a member of a nonprofit organization advocating on behalf of*
38 *the elderly, and one of the public members shall be a probate*
39 *court investigator.*

1 (b) Each member of the committee shall be appointed for a
2 term of four years, and shall hold office until the appointment of
3 his or her successor or until one year shall have elapsed since
4 the expiration of the term for which he or she was appointed,
5 whichever first occurs.

6 (c) Vacancies shall be filled by the appointing power for the
7 unexpired portion of the terms in which they occur. No person
8 shall serve as a member of the committee for more than two
9 consecutive terms.

10 (d) The Governor shall appoint the member from a nonprofit
11 organization advocating on behalf of the elderly, the probate
12 court investigator, and the three licensees. The Senate Committee
13 on Rules and the Speaker of the Assembly shall each appoint a
14 public member.

15 (e) Every member of the committee shall receive per diem and
16 expenses as provided in Sections 103 and 113.

17 (f) The committee shall do all of the following:

18 (1) Examine the functions and policies of the bureau and make
19 recommendations with respect to policies, practices, and
20 regulations as may be deemed important and necessary by the
21 director or the chief to promote the interests of consumers or that
22 otherwise promote the welfare of the public.

23 (2) Consider and make appropriate recommendations to the
24 bureau in any matter relating to professional fiduciaries in this
25 state.

26 (3) Provide assistance as may be requested by the bureau in
27 the exercise of its powers or duties.

28 (4) Meet at least once each quarter. All meetings of the
29 committee shall be public meetings.

30 (g) The bureau shall meet and consult with the committee
31 regarding general policy issues related to professional
32 fiduciaries.

33 (h) Notwithstanding any other provision of law, if the bureau
34 becomes inoperative or is repealed in accordance with Section
35 6510, or by subsequent acts, the committee shall succeed to and
36 is vested with all the duties, powers, purposes, responsibilities,
37 and jurisdiction, not otherwise repealed or made inoperative, of
38 the bureau and its chief. The succession of the committee to the
39 functions of the bureau as provided in this subdivision shall
40 establish the committee as the Professional Fiduciaries

1 *Committee in the department within the meaning of Section 22,*
2 *and all references to the bureau in this code shall be considered*
3 *as references to the committee.*

4 6513. *The bureau may employ, subject to civil service and*
5 *other provisions of law, other employees as may be necessary to*
6 *carry out the provisions of this chapter under the direction of the*
7 *executive officer.*

8 ~~This section shall become inoperative on July 1, 2011, and, as~~
9 ~~of January 1, 2012, is repealed, unless a later enacted statute,~~
10 ~~which becomes effective on or before January 1, 2011, deletes or~~
11 ~~extends the dates on which it becomes inoperative and is~~
12 ~~repealed.~~

13 ~~6514. (a) The board may convene from time to time as it~~
14 ~~deems necessary.~~

15 ~~(b) Four members of the board constitute a quorum for the~~
16 ~~transaction of business at any meeting.~~

17 ~~(c) It shall require the affirmative vote of a majority of those~~
18 ~~members present at a meeting, assuming that those members~~
19 ~~constitute at least a quorum, to pass any motion, resolution, or~~
20 ~~measure.~~

21 ~~(d) The board shall annually elect one of its members to act as~~
22 ~~president and one member to act as vice president, who shall~~
23 ~~hold their respective positions at the pleasure of the board. The~~
24 ~~president or the executive officer may call meetings of the board~~
25 ~~and any duly appointed committee at a specified time and place.~~

26 ~~(e) The board chief.~~

27 6514. *The bureau shall keep a complete record of all its*
28 *proceedings and all licenses issued, renewed, or revoked, and a*
29 *detailed statement of receipts and disbursements.*

30 6515. *The duty of administering and enforcing this chapter is*
31 *vested in the board and the executive officer subject to, and*
32 *under the direction of, the board. In the performance of this duty,*
33 *the board and the executive officer have all of the powers of, and*
34 *vested in the bureau and the chief. In the performance of this*
35 *duty, the bureau and the chief have all of the powers of, and are*
36 *subject to all of the responsibilities vested in and imposed upon,*
37 *the head of a department by Chapter 2 (commencing with*
38 *Section 11150) of Part 1 of Division 3 of Title 2 of the*
39 *Government Code.*

1 6516. Protection of the public shall be the highest priority for
2 the ~~board~~ *bureau* in exercising its licensing, regulatory, and
3 disciplinary functions. Whenever the protection of the public is
4 inconsistent with other interests sought to be promoted, the
5 protection of the public shall be paramount.

6 6517. The ~~board~~ *bureau* may adopt, amend, or repeal, in
7 accordance with the provisions of the Administrative Procedure
8 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of
9 Division 3 of Title 2 of the Government Code), regulations
10 necessary to enable the ~~board~~ *bureau* to carry into effect the
11 provisions of law relating to this chapter.

12 6518. (a) The ~~board~~ *bureau* shall be responsible for
13 administering the licensing and regulatory program established in
14 this chapter.

15 (b) The ~~board~~ *bureau* shall approve classes qualifying for
16 prelicense education, as well as classes qualifying for annual
17 continuing education required by this chapter. The ~~board~~ *bureau*
18 shall maintain a current list of all approved classes.

19 (c) The ~~board~~ *bureau* shall arrange for the preparation and
20 administration of licensing examinations.

21 ~~6519. Board members shall be immune from liability for any~~
22 ~~act taken pursuant to this chapter, provided that they have acted~~
23 ~~in good faith.~~

24 6520. The ~~board~~ *bureau* shall adopt, by regulation, a
25 Professional-Fiduciaries² *Fiduciaries* Code of Ethics. The
26 Professional-Fiduciaries² *Fiduciaries* Code of Ethics shall be
27 consistent with all statutory requirements, as well as
28 requirements developed by the courts and the Judicial Council.
29 The Professional-Fiduciaries² *Fiduciaries* Code of Ethics shall be
30 provided electronically on the ~~board's~~ *bureau's* Internet Web site
31 and to persons who request an application for licensure. The
32 ~~board~~ *bureau* may, by regulation, amend the Professional
33 ~~Fiduciaries²~~ *Fiduciaries* Code of Ethics from time to time, as it
34 deems necessary, provided that no amendment shall be effective
35 with regard to a licensee until the licensee's next annual license
36 renewal cycle, as specified in subdivision (a) of Section 6542, is
37 completed. Any amendment to the Professional-Fiduciaries²
38 *Fiduciaries* Code of Ethics shall be included in the license
39 renewal materials sent to a licensee.

Article 3. Licensing

6530. (a) On and after ~~January~~ July 1, 2008, no person shall act or hold himself or herself out to the public as a professional fiduciary unless that person is licensed as a professional fiduciary in accordance with the provisions of this chapter.

(b) This section does not apply to a person licensed as an attorney under the State Bar Act (Chapter 4 (commencing with Section 6000)).

(c) This section does not apply to a person licensed as, and acting within the scope of practice of, a certified public accountant pursuant to Chapter 1 (commencing with Section 5000) of Division 3.

(d) This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

6531. No professional fiduciary shall operate with an expired, suspended, or revoked license ~~or without a valid licensing bond, as required by Section 6543.~~

6532. A person who has been licensed by the ~~board~~ bureau may identify himself or herself as a “licensed professional fiduciary.”

6533. In order to meet the qualifications for licensure as a professional fiduciary a person shall meet all of the following requirements:

(a) Be at least 21 years of age.

(b) Be a United States citizen, or be legally admitted to the United States.

(c) Have not committed any acts that are ground for denial of a license under Section 480 or 6536.

(d) Submit fingerprint images as specified in Section 6533.5 in order to obtain criminal offender record information.

(e) Have completed the required prelicensing education described in Section 6538.

(f) Have passed the licensing examination administered by the ~~board~~ bureau pursuant to Section 6539.

(g) Have at least one of the following:

1 (1) A baccalaureate degree of arts or sciences from a college
2 or university accredited by a nationally recognized accrediting
3 body of colleges and universities or a higher level of education.

4 (2) An associate of arts or science degree from a college or
5 university accredited by a nationally recognized accrediting body
6 of colleges and universities, and at least five years of experience
7 with substantive fiduciary responsibilities working for a
8 professional fiduciary, public agency, or financial institution
9 acting as a conservator, guardian, trustee, personal representative,
10 or agent under a power of attorney.

11 (3) Experience of not less than three years, prior to ~~January 1,~~
12 ~~2007 July 1, 2008~~, with substantive fiduciary responsibilities
13 working for a public agency or financial institution acting as a
14 conservator, guardian, trustee, personal representative, or agent
15 under a power of attorney.

16 (h) Agree to adhere to the Professional—~~Fiduciaries'~~
17 *Fiduciaries* Code of Ethics and to all statutes and regulations.

18 (i) Consent to the ~~board~~ bureau conducting a credit check on
19 the applicant.

20 (j) File a completed application for licensure with the ~~board~~
21 *bureau* on a form provided by the ~~board~~ *bureau* and signed by
22 the applicant under penalty of perjury.

23 (k) Submit with the license application a nonrefundable
24 application fee, as specified in this chapter.

25 ~~(l) File the bond with the board as described in Section 6542.~~
26 6533.5. Criminal offender record information shall be
27 obtained on each applicant as provided in this section.

28 (a) Each applicant shall submit fingerprint images to the
29 Department of Justice for the purpose of obtaining criminal
30 offender record information regarding state and federal level
31 convictions and arrests, including arrests where the Department
32 of Justice establishes that the person is free on bail or on his or
33 her own recognizance pending trial or appeal.

34 (b) When received, the Department of Justice shall forward to
35 the Federal Bureau of Investigation requests for federal summary
36 criminal history information received pursuant to this section.
37 The Department of Justice shall review the information returned
38 from the Federal Bureau of Investigation and compile and
39 disseminate a fitness determination to the ~~board~~ *bureau*.

1 (c) The Department of Justice shall provide a response to the
2 ~~board~~ *bureau* pursuant to subdivision (p) of Section 11105 of the
3 Penal Code.

4 (d) The ~~board~~ *bureau* shall request from the Department of
5 Justice subsequent arrest notification service, as provided
6 pursuant to Section 11105.2 of the Penal Code.

7 (e) The Department of Justice shall charge a fee sufficient to
8 cover the cost of processing the request described in this section.

9 6534. (a) The ~~board~~ *bureau* shall maintain the following
10 information in each licensee's file, shall make this information
11 available to a court for any purpose, including the determination
12 of the appropriateness of appointing or continuing the
13 appointment of, or removing, the licensee as a conservator,
14 guardian, trustee, or personal representative, and shall otherwise
15 keep this information confidential, except as provided in
16 subdivisions (b) and (c) of this section:

17 (1) The names of the licensee's current conservatees or wards
18 and the trusts or estates currently administered by the licensee.

19 (2) The aggregate dollar value of all assets currently under the
20 licensee's supervision *as a professional fiduciary*.

21 (3) The licensee's current addresses and telephone numbers
22 for his or her place of business and place of residence.

23 (4) Whether the licensee has ever been removed for cause as
24 conservator, guardian, trustee, or personal representative or has
25 ever resigned as conservator, guardian, trustee, or personal
26 representative in a specific case, the circumstances causing that
27 removal or resignation, and the case names, court locations, and
28 case numbers associated with the removal or resignation.

29 (5) The case names, court locations, and case numbers of all
30 conservatorship, guardianship, or trust or other estate
31 administration cases that are closed for which the licensee served
32 as the conservator, guardian, trustee, or personal representative.

33 (6) Information regarding any discipline imposed upon the
34 licensee by the ~~board~~ *bureau*.

35 (7) Whether the licensee has ever filed for bankruptcy or held
36 a *controlling* financial interest in a business that filed for
37 bankruptcy.

38 (b) The ~~board~~ *bureau* shall make the information in
39 paragraphs (2), (4), (6), and (7) of subdivision (a) available to the
40 public.

1 (c) The ~~board~~ *bureau* shall also publish information regarding
2 licensees on the Internet as specified in Section 27. The
3 information shall include, but shall not be limited to, information
4 regarding license status and the information specified under
5 subdivision (b).

6 6535. The ~~board~~ *bureau* shall approve or deny licensure in a
7 timely manner to applicants who apply for licensure. Upon
8 approval of a license, the ~~board~~ *bureau* shall notify the applicant
9 of issuance of the license, and shall issue a license certificate
10 identifying him or her as a “licensed professional fiduciary.”

11 6536. The ~~board~~ *bureau* shall review all applications for
12 licensure and may investigate an applicant’s qualifications for
13 licensure. The ~~board~~ *bureau* shall approve those applications that
14 meet the requirements for licensure, but shall not issue a license
15 to any applicant who meets any of the following criteria:

16 (a) Does not meet the qualifications for licensure under this
17 chapter.

18 (b) Has been convicted of a crime substantially related to the
19 qualifications, functions, or duties of a fiduciary.

20 (c) Has engaged in fraud or deceit in applying for a license
21 under this chapter.

22 (d) Has engaged in dishonesty, fraud, or gross negligence in
23 performing the functions or duties of a fiduciary, including
24 engaging in such conduct prior to ~~January 1, 2007~~ *July 1, 2008*.

25 (e) Has been removed as a fiduciary by a court for breach of
26 trust committed intentionally, with gross negligence, in bad faith,
27 or with reckless indifference, or has demonstrated a pattern of
28 negligent conduct, including a removal prior to ~~January 1, 2007~~
29 *July 1, 2008*, and all appeals have been taken, or the time to file
30 an appeal has expired.

31 6537. The ~~board~~ *bureau* may deny a license for the reasons
32 specified in Section 480 or 6536. An applicant notified of the
33 denial of his or her application for licensure shall have the right
34 to appeal to the ~~board~~ *bureau* as specified in Chapter 2
35 (commencing with Section 480) of Division 1.5.

36 6538. (a) To qualify for licensure, an applicant shall have
37 completed 30 hours of prelicensing education courses provided
38 by an educational program approved by the ~~board~~ *bureau*.

39 (b) To renew a license, a licensee shall complete 15 hours of
40 approved continuing education courses each year.

(c) The cost of any educational course required by this chapter shall not be borne by any client served by a licensee.

6539. As a requirement for licensure, an applicant shall take and pass the licensing examination administered by the ~~board~~ *bureau*. The ~~board~~ *bureau* shall determine the frequency with which the examination will be given. The ~~board~~ *bureau* shall also determine the frequency with which an applicant for reexamination may sit for the examination. The ~~board~~ *bureau* shall administer the examination through a computer-based examination process and *may also administer the examination through other means.*

6540. Individuals, entities, agencies, and associations that propose to offer educational programs qualifying for the prelicensing educational or continuing educational requirements of this chapter shall apply for and obtain the approval of the ~~board~~ *bureau*.

6541. (a) A license shall expire one year after it was issued on the last day of the month in which it was issued.

(b) A license may be renewed by filing a renewal application with the ~~board~~ *bureau*, submitting the annual statement required by Section 6561, submitting proof of the licensee's compliance with the continuing education requirements of this chapter, and payment of the renewal fee set by the ~~board~~ *bureau*, provided that the licensee has not engaged in conduct that would justify the ~~board's~~ *bureau's* refusal to grant the renewal. Acts justifying the ~~board's~~ *bureau's* refusal to renew a license shall include any of the following:

(1) Conviction of a crime substantially related to the qualifications, functions, or duties of a fiduciary.

(2) Fraud or deceit in obtaining a license under this chapter.

(3) Dishonesty, fraud, or gross negligence in performing the functions or duties of a professional fiduciary.

(4) Removal by a court as a fiduciary for breach of fiduciary duty if all appeals have been taken or the time to file an appeal has expired.

~~(e) By operation of law, the board shall not renew the license of a professional fiduciary whose license bond has lapsed or been canceled, reduced, or is otherwise no longer in effect. The license may be renewed upon submission of proof of a valid licensing bond, as required by Section 6542.~~

~~6542. (a) As a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, an applicant or licensee shall file with the board a bond of one hundred thousand dollars (\$100,000), executed by a corporate surety admitted to do business in this state and conditioned to compliance with this chapter. This bond shall be in addition to any other bond otherwise required of the applicant or licensee.~~

~~(1) The total aggregate liability on the bond shall be limited to one hundred thousand dollars (\$100,000).~~

~~(2) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.~~

~~(b) The bond required under subdivision (a) shall be increased to three hundred thousand dollars (\$300,000) if the licensee provides services to more than five but not more than 10 persons or if the aggregate value of the conservatorship, guardianship, trust, or probate estates administered exceeds five hundred thousand dollars (\$500,000), and to one million dollars (\$1,000,000) if the licensee provides services to more than 10 persons or if the aggregate value of the conservatorship, guardianship, trust, or probate estates administered exceeds one million dollars (\$1,000,000). In addition, the board may, for good cause shown, further increase the bond requirement for the licensing or renewal of a license of a conservator, guardian, trustee, or personal representative.~~

~~(c) The bond required by this section shall be in favor of, and be payable to, the people of the State of California and shall be for the benefit of any person damaged by any fraud, misstatement, misrepresentation, unlawful act or omission, or failure to provide the services of the professional fiduciary or the agents, representatives, or employees of the professional fiduciary while acting within the scope of that employment or agency and shall be payable upon the imposition of any judgment against the licensee by a court, or disciplinary decision against the licensee by the board.~~

~~6543. (a) A person who is awarded damages in an action or proceeding for injuries caused by the acts of a person engaged in the business of, or acting in the capacity of, a professional fiduciary, in the performance of his or her duties as a~~

1 professional fiduciary, may recover damages from the bond
2 required by Section 6542. In an action brought by the Attorney
3 General, a district attorney, or a city attorney, the court may
4 order relief for benefit of the injured parties to be paid from the
5 bond.

6 (b) ~~When any claim or claims against a bond have been paid~~
7 ~~so as to reduce the principal amount of the bond remaining~~
8 ~~available to pay claims below the principal amount required by~~
9 ~~Section 6542, the licensee shall cease to act as a professional~~
10 ~~fiduciary unless and until the bond has been reinstated up to the~~
11 ~~minimum amount required by Section 6542.~~

12 (c) ~~A payment from the bond shall not be considered the sole~~
13 ~~remedy for action taken against a licensee.~~

14 Article 4. Practice Provisions

15
16
17 6560. A licensee shall keep complete and accurate records of
18 client accounts, and shall make those records available for audit
19 ~~as may be ordered by the board.~~ *by the bureau.*

20 6561. (a) A licensee shall initially, and annually thereafter,
21 file with the ~~board~~ *bureau* a statement under penalty of perjury
22 containing the following:

23 (1) Her or his business address, telephone number, and
24 facsimile number.

25 (2) Whether or not he or she has been removed *as conservator;*
26 *guardian, trustee, or personal representative* for cause. The
27 licensee may file an additional statement of the issues and facts
28 pertaining to the case.

29 (3) The case names, court locations, and case numbers for all
30 matters where the licensee has been appointed by the court.

31 (4) Whether he or she has been found by a court to have
32 breached a fiduciary duty.

33 (5) Whether he or she has resigned or settled a matter in which
34 a complaint has been filed, along with the case number and a
35 statement of the issues and facts pertaining to the allegations.

36 (6) Any licenses or professional certificates held by the
37 licensee.

38 (7) Any ownership or beneficial interests in any businesses or
39 other enterprises held by the licensee or by a family member that
40 receives or has received payments from a client of the licensee.

1 (8) Whether the licensee has ever filed for bankruptcy or held
2 a *controlling* financial interest in a business that filed for
3 bankruptcy.

4 (9) The name of any persons or entities that have an interest in
5 the licensee's professional fiduciary business.

6 (10) Whether the licensee has been convicted of a crime .

7 (b) The statement by the licensee required by this section may
8 be filed electronically with the ~~board~~ *bureau*, in a form approved
9 by the ~~board~~ *bureau*. However, any additional statement filed
10 under paragraph (2) of subdivision (a) shall be filed in writing.

11 6562. The annual statement shall be filed with the ~~board~~
12 *bureau* 60 days prior to the expiration of the license as provided
13 in subdivision (a) of Section 6541.

14 15 Article 5. Enforcement and Disciplinary Proceedings

16
17 6580. (a) The ~~board~~ *bureau* may upon its own, and shall,
18 upon the receipt of a complaint from any person, investigate the
19 actions of any professional fiduciary. The ~~board~~ *bureau* shall
20 review a professional fiduciary's alleged violation of statute,
21 regulation, or the Professional ~~Fiduciaries'~~ *Fiduciaries* Code of
22 Ethics and any other complaint referred to it by the public, a
23 public agency, the Conservatorship Ombudsman, as provided in
24 Section 9801 of the Welfare and Institutions Code, or the
25 department, and may impose sanctions upon a finding of a
26 violation or a breach of fiduciary duty.

27 (b) Sanctions shall include any of the following:

28 (1) Administrative citations and fines as provided in Section
29 125.9 for ~~violations~~ *a violation* of this chapter, the Professional
30 ~~Fiduciaries'~~ *Fiduciaries* Code of Ethics, or any regulation
31 adopted under this chapter.

32 (2) License suspension, probation, or revocation.

33 (c) The ~~board~~ *bureau* shall provide on the Internet information
34 regarding any sanctions imposed by the ~~board~~ *bureau* on
35 licensees, including, but not limited to, information regarding
36 citations, fines, suspensions, and revocations of licenses or other
37 related enforcement action taken by the ~~board~~ *bureau* relative to
38 the licensee.

39 6582. All proceedings against a licensee for any violation of
40 this chapter or any regulations adopted by the ~~board~~ *bureau* shall

1 be conducted in accordance with the Administrative Procedure
2 Act (Chapter 5 (commencing with Section 11500) of Part 1 of
3 Division 3 of Title 2 of the Government Code), and shall be
4 prosecuted by the Attorney General's office, and the ~~board~~
5 *bureau* shall have all the powers granted therein.

6 6582.5. Notwithstanding Section 6582, if any violation
7 occurs, in its discretion, the ~~board~~ *bureau* may refer the case to
8 the Attorney General or to the local district attorney for criminal
9 prosecution. *The referral of a case for criminal prosecution shall*
10 *not preclude the bureau from taking any other action provided*
11 *for in this chapter.*

12 6583. The ~~board~~ *bureau* shall establish a system of
13 administrative citations and fines under Section 125.9 for
14 violations of this chapter, the Professional—~~Fiduciaries~~
15 *Fiduciaries* Code of Ethics, or any regulation adopted under this
16 chapter.

17 6584. A license issued under this chapter may be suspended,
18 revoked, denied, or other disciplinary action may be imposed for
19 one or more of the following causes:

20 (a) Conviction of any felony or any misdemeanor, if the
21 misdemeanor is substantially related to the functions and duties
22 of a professional fiduciary. The record of conviction, or a
23 certified copy thereof, is conclusive evidence of the conviction.

24 (b) Failure to notify the ~~board~~ *bureau* of a conviction as
25 required by paragraph (10) of subdivision (a) of Section 6561.

26 (c) Fraud or misrepresentation in obtaining a license.

27 (d) Fraud, dishonesty, corruption, willful violation of duty,
28 gross negligence or incompetence in practice, or unprofessional
29 conduct in, or related to, the practice of a professional fiduciary.
30 For purposes of this section, unprofessional conduct includes, but
31 is not limited to, acts contrary to professional standards
32 concerning any provision of law substantially related to the
33 duties of a professional fiduciary.

34 (e) Failure to comply with, or to pay a monetary sanction
35 imposed by, a court for failure to provide timely reports. The
36 record of the court order, or a certified copy thereof, is
37 conclusive evidence that the sanction was imposed.

38 (f) Failure to pay a civil penalty relating to the licensee's
39 professional fiduciary duties.

(g) The revocation of, suspension of, or other disciplinary action against, any other professional license by the State of California or by another state. A certified copy of the revocation, suspension, or disciplinary action is conclusive evidence of that action.

(h) Violation of this chapter or of the applicable provisions of Division 4 (commencing with Section 1400), Division 4.5 (commencing with Section 4000), Division 4.7 (commencing with Section 4600), or Division 5 (commencing with Section 5000) of the Probate Code or of any of the statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary.

Article 6. Revenue

6590. All fees collected by the ~~board~~ *bureau* shall be paid into the Professional Fiduciary Fund in the State Treasury, which is hereby created. The money in the fund shall be available to the ~~board~~ *bureau* for expenditure for the purposes of this chapter only upon appropriation by the Legislature.

6591. The Professional Fiduciary Fund shall be the successor fund to those funds deposited under the Statewide Registry with the Department of Justice pursuant to Chapter 13 (commencing with Section 2850) of Part 4 of Division 4 of the Probate Code.

6592. (a) The fee for a professional fiduciary examination and reexamination shall be set by the ~~board~~ *bureau* through regulation at the amount necessary to recover the actual costs to develop and administer the examination.

(b) The license fee to obtain a professional fiduciary license shall be set by the ~~board~~ *bureau*.

(c) The renewal fee for a professional fiduciary license shall be set by the ~~board~~ *bureau*.

(d) The license and renewal fees under subdivisions (b) and (c) shall be set by the ~~board~~ *bureau* through regulation at an amount necessary to recover the costs to the ~~board~~ *bureau* in carrying out the provisions of this chapter.

~~SEC. 3.~~

SEC. 4. Section 60.1 is added to the Probate Code, to read:

1 60.1. (a) “Professional fiduciary” means a person who is a
2 professional fiduciary as defined under subdivision (f) of Section
3 6501 of the Business and Professions Code.

4 (b) On and after ~~January~~ July 1, 2008, no person shall act or
5 hold himself or herself out to the public as a professional
6 fiduciary unless he or she is licensed as a professional fiduciary
7 under Chapter 6 (commencing with Section 6500) of Division 3
8 of the Business and Professions Code.

9 ~~SEC. 4.~~

10 SEC. 5. Article 4 (commencing with Section 2340) is added
11 to Chapter 4 of Part 4 of Division 4 of the Probate Code, to read:

12
13 Article 4. Professional Fiduciaries

14
15 2340. On and after ~~January~~ July 1, 2008, a superior court may
16 not appoint a person to carry out the duties of a professional
17 fiduciary, unless he or she ~~is licensed~~ *holds a valid, unexpired,*
18 *unsuspended license* as a professional fiduciary under Chapter 6
19 (commencing with Section 6500) of Division 3 of the Business
20 and Professions Code.

21 2341. This article shall become operative on ~~January~~ July 1,
22 2008.

23 ~~SEC. 5.~~

24 SEC. 6. Section 2345 is added to the Probate Code, to read:

25 2345. This article shall remain in effect only until ~~January~~
26 *July 1, 2008*, and as of ~~that date~~ *January 1, 2009*, is repealed,
27 unless a later enacted statute, that is enacted before January 1,
28 ~~2008 2009~~, deletes or extends ~~that date~~ *the dates on which it*
29 *becomes inoperative and is repealed.*

30 ~~SEC. 6.~~

31 SEC. 7. Section 2856 is added to the Probate Code, to read:

32 2856. This chapter shall remain in effect only until ~~January~~
33 *July 1, 2008*, and as of ~~that date~~ *January 1, 2009*, is repealed,
34 unless a later enacted statute, that is enacted before January 1,
35 ~~2008 2009~~, deletes or extends ~~that date~~ *the dates on which it*
36 *becomes inoperative and is repealed.*

37 ~~SEC. 7.~~

38 SEC. 8. This act shall only become operative if Senate Bill
39 1116, Senate Bill 1716, and Assembly Bill 1363 of the 2005–06

1 Regular Session are enacted and become effective on or before
2 January 1, 2007.

3 ~~SEC. 8.~~

4 *SEC. 9.* No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the
9 penalty for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition of a
11 crime within the meaning of Section 6 of Article XIII B of the
12 California Constitution.